80-1727

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ALEXANDER L. STEVAS,
CLERK

No.

In the Supreme Court of the United States

OCTOBER TERM, 1980

IN RE BERNARD BLOCH, PETITIONER,

VS.

ANTOINE L. JOSEPH, JUDGE,
SITTING BY DESIGNATION FOR THE
UNITED STATES DISTRICT COURT
FOR THE VIRGIN ISLANDS DIVISION
OF ST. CROIX, CHRISTIANSTED, RESPONDENT.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

I

Did Judge Joseph, sitting as a Federal District Court Judge in a divorce action, exceed his statutory authority, judicial power and jurisdiction by conveying real property (not marital homestead property) and which is contrary to the statutory law of the Virgin Islands and the mandate of the Court of Appeals for the Third Circuit?

II

Did the Court of Appeals for the Third Circuit create a conflict within its own circuit by ruling that real property cannot be conveyed (except marital homestead) in a prior decision and can be conveyed in the case at bar, thus bringing uncertainty in the law in this area and the question of the divorce court jurisdiction unanswered?

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VIRGIN ISLANDS CODE

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In the Supreme Court of the United States

OCTOBER TERM, 1980

IN RE BERNARD BLOCH, PETITIONER,

VS.

ANTOINE L. JOSEPH, JUDGE,
SITTING BY DESIGNATION FOR THE
UNITED STATES DISTRICT COURT
FOR THE VIRGIN ISLANDS DIVISION
OF ST. CROIX, CHRISTIANSTED, RESPONDENT.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

Petitioner prays that a Writ of Mandamus issue for supervisory control to review a decision of the District Court which exceeded its judicial power and jurisdiction in a divorce action by conveying real property and the Court of Appeals for the Third Circuit which is in conflict with its prior decision and is in conflict with applicable law of the Virgin Islands entered in this action on February 25, 1981.

OPINION BELOW

Excerpts of the opinion of the District Court entered on June 30, 1977 (see appendix page 1 and 3); Judgment Order of Court of Appeals entered May 8, 1978, no hearing nor opinion (see appendix page 4 and 5); Judgment Order of the Court of Appeals entered December 18, 1980, no hearing nor opinion (see appendix page 6); Sur Petition for Rehearing of Court of Appeals denied entered on January 16, 1981 (see appendix page 7). Petition for Writ of Mandamus of the Court of Appeals denied entered on February 25, 1981 (see appendix page 8).

JURISDICTION

The judgment order of the Court of Appeals for the Third Circuit was entered on January 16, 1981. The motion of the Writ of Mandamus of the Court of Appeals for the Third Circuit was entered on February 25, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable provisions in the United States Constitution are found in the 14th amendment of procedural due process and equal protection clause.

FEDERAL CODE INVOLVED

The applicable Federal Code involved is found in Title 28 U.S.C. section 1651(a) which provides in pertinent part:

That Federal District Court may not usurpate its judicial power when it has no jurisdiction to do so.

VIRGIN ISLANDS STATUTE INVOLVED

Title 16 V.I.C. section 109 limits judicial power and jurisdictional authority of the District Court Judge to convey real property in a divorce action.

STATEMENT OF THE CASE

Judge Antoine L. Joseph, sitting by designation as a U.S. District Court Judge for the Virgin Islands in a divorce action, ordered conveyed two pieces of real estate property known as lot 22, a five unit apartment and lot 243A, an unconnected vacant lot (see excerpt of Judge Joseph's memorandum and order appendix page 1-3). This is contrary to the laws of the Virgin Islands under Title 16 V.I.C. §109 and more importantly Judge Joseph exceeded his statutory authority, Judicial power and Jurisdiction to do so. Judge Joseph joined as necessary parties, Petitioner Bernard Block and others, to a divorce action between Harold Bloch (husband) and Ethyle Bloch (wife) for the sole purpose of determining ownership to lot 22 and lot 243A. Lot 22 was titled in the name of Bernard Bloch, Joan Bloch, and Rosalyn Bloch and lot 243A was titled in the name of Naruth Corporation, Bernard Bloch being majority stockholder. Judge Joseph exceeded his power to determine ownership (quiet title) of real property as a divorce judge. A divorce judge has been given specific authority and jurisdiction under the laws of the Virgin Islands Title 16 V.I.C. § 109:

1. Award custody of children.
2. Order support of children.
3. Order delivery of personal property to the wife.
4. Award alimony in gross or installments.

The Court of Appeals has mandated that a divorce judge may convey marital homestead property by the entireties.

Lot 22 is a five unit apartment in which rent is collected. Lot 243A is an unconnected vacant lot. Neither of which can be considered marital homestead property nor had the property been determined to be marital homestead property. In *Todman* v *Todman*, 571 F2d 150 footnote 2, the Court stated that:

> "A homestead shall constitute the abode including land and building, owned by and actually occupied by a person or members of his family free of rental charge."

The U.S. District Court of the Virgin Islands in a divorce proceeding has no authority, power or jurisdiction to order a division of real property. Authority can be granted only by statute and therefore Judge Joseph exceeded his authority, power and jurisdiction since the statute is silent as to conveying real property.

The Court of Appeals for the Third Circuit affirmed Judge Joseph's order to convey real property, see appendix page 4 and 5, contrary to its own mandate in *Dnydul* v *Dyndul*, 541 F2d 132 (3rd Cir 1976) and *Todman* v *Todman*, 571 F2d 149 (3rd Cir. 1978).

In *Dyndul, supra,* the same Judge Joseph entered a decree granting a divorce and then made a division of real property. The Court of Appeals for the Third Circuit held that in absence of specific statutory authority to convey real property, Judge Joseph had no authority or jurisdiction to order a division of real property and reversed his order. But in case at bar the Court of Appeals affirmed Judge Joseph's order conveying real property (see appendix page 4 and 5). We now have a conflict of decision within the Court of Appeals for the Third Circuit and an usurpation of power of the District Court. The Court of Appeals for the Third Circuit went on to say that the Virgin Islands legislature has comprehensively regulated the granting of divorce in that jurisdiction. This regulation is supported in Title 16 V.I.C. §109 by which the legislature set forth, specifically and in detail, the powers of the Virgin Islands divorce court upon declaring a marriage dissolved. There is absolutely no reference made to real property, although the court has been given specific authority: (1) to award custody of children, 16 V.I.C. §109(1); (2) to order

support for children, 16 V.I.C. §109(2); (3) to order delivery of personal property to the wife, 16 V.I.C. §109(3); and (4) to award alimony in gross or installments to the party in need, 16 V.I.C. §109(4). These powers have been vested in the Virgin Islands Court since 1944, and there has been no alteration of what the Court can do upon entry of a final order of divorce. Given that history, only the legislature can broaden these long standing powers. The Third Circuit Court of Appelas in *Dyndul* quoted:

> "The parties have not cited to us, nor have we been able to find any other provision of the Virgin Islands Code dealing with division of marital property in divorce. It is the rule in the majority of American jurisdiction that the authority of divorce court to effect a division of the property, at least as to real estate, is purely statutory. See e.g. Klaisner v Klaisner, 328 NE2d 341 (1975). It is an accepted doctrine in both England and America that a court of equity in dissolving a marriage cannot divide the property of the spouses except by statutory authority. Lopez v Lopez, 112 A2d 466 (1955). Our ruling does not leave courts and parties without means to effect a distribution of property. Either party may institute a separate action in the proper jurisdiction for partition of property held as tenants in common. Additionally, where one spouse has a particular equitable interest in property, a separate equity action may be maintained to realize that interest."

The Court of Appeals for the Third Circuit has a duty to decide which of the two conflicting views prevail. There is a clear constitutional and statutory right to protect.

The Judgment order of the Court of Appeals dated May 8, 1978 should be vacated and the case remanded where the

court made no findings of fact or conclusion of law and rendered no opinion, since this court cannot determine the basis for the judgment. *Victory Touring Co., Inc.* v *Bordelon*, 219 F2d 540 (1955); *Irish* v *United States*, 225 F2d 3 (1955).

Finding of fact should be so explicit as to give this Court a clear understanding of the basis of the Court of Appeals decision. Finding of fact must be made on every material issue.

The United States Supreme Court granted Certiorari to resolve conflict between the United States Court of Appeals and California Supreme Court as to applicability of Federal Statute (see *State of Cal.* v *Taylor*, 353 US 553; *Leiter Minerals, Inc.* v *U.S.*, 352 US 220).

The Supreme Court granted Certiorari to consider a question of importance as to the power of the District Court. *Fong Foo* v *U.S.*, 369 US 141.

It is the duty of the Court of Appeals to review the Judgment order of the District Court in the light of the controlling law of the Virgin Islands and the precedent laid down by the Court of Appeals in *Dyndul* and *Todman, supra*.

REASONS FOR GRANTING THE WRIT

1. The decision of the U.S. District Court of the Virgin Islands conveying real property constitutes a clearly erroneous usurpation of judicial power and a clear abuse of discretion. In *Superior Court of the State of California* v *United States District Court Northern District of California*, 256 F2d 844 (1958) the U.S. Court of Appeals for Ninth Circuit stated:

> "When the Federal District Court has no judicial power to do what it purports to do, when its action is not mere error, but usurpation of power, the Court of Appeals may issue a Writ of Mandamus or prohibition under applicable statute 28 USCA §1651."

The traditional use of the Writ of Mandamus in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction. See *Roche* v *Evaporated Milk Ass.*, 319 US 21.

This Supreme Court has power to issue peremptory writs directed to the District Courts in aid of appellate jurisdiction. Since the justification for the alternative Writ of Certiorari may be in doubt, this Court has power to make the orders prayed for in this proceeding. *De Beer Consolidated Mines, Ltd.* v *United States*, 325 US 212, 217.

2. The United States Supreme Court has power to issue extraordinary Writs of Mandamus and Prohibitions where appeal is clearly inadequate and there is a clear usurpation of judicial power and a clear abuse of discretion of the U.S. District Court and where Court of Appeals for Third Circuit refused to act and there is a question of public importance. *Exparte Easton* 95 US 68; *Exparte Gorden* 104 US 515; *Exparte Phenix* 118 US 610.

3. The Supreme Court of the United States possessed jurisdiction to entertain this petition for further relief to enforce a prior opinion and mandate of the Court of Appeals for the Third Circuit, and to afford relief where necessary. The Court of Appeals is bound by prior decision of its own circuit. See *McCarty* v *U.S. District Court*, 19 F2d 462.

4. Mandamus would be proper means for rectifying the error of the U.S. District Court which misconceived the scope and effect of the law. Incorrect opinion of the Virgin Islands law interferes with important Virgin Islands policies.

5. Supervisory control of the U.S. District Court of the Virgin Islands and Court of Appeals for the Third Circuit is necessary to proper judicial administration in the federal system.

6. Since it is the official duty of the U.S. District Court of the Virgin Islands to follow the mandate of the Court of Appeals for the Third Circuit, Mandamus will lie to compel the District Court Judge to obey the Court of Appeals mandate. It has no authority to deviate from the mandate and is without jurisdiction to vary or extend it. See *Bailey* v *Henslee*, 309 F2d 840, and *Wm. G. Roe & Co.* v *Armour & Co.*, 414 F2d 862.

7. The Supreme Court of the United States has jurisdiction to review motion of the Court of Appeals denying a Writ of Mandamus. See *South Carolina* v *Seymour*, 153 US 353. Where jurisdiction questions were raised in District Court and in Court of Appeals which has not been considered by the Court of Appeals, Supreme Court will remand the case back to that Court for further proceedings. *Tunstall* v *Brotherhood of Locomotive Firemen and Enginemen*, 323 US 210 (1944).

Where the Court of Appeals did not reach issue, Supreme Court will determine issue on merits since it concerns construction and application of Federal Rule of Civil Procedure. *Schlangerhauf* v *Holder*, 379 US 104 (1964). The lack of an opinion by the Court of Appeals precludes any proper appraisal of the case and is the basis for the invocation of the extraordinary writ.

It should be very important to view the failure of the Court of Appeals to supply any reasonable justification of its action. Without an opinion from the Court of Appeals, Petitioner does not know what role, if any, played in the decision of the District Court. Petitioner is not trying to control the decision of the trial court, but rather merely to confine the lower court to the sphere of its judicial power.

CONCLUSION

Petitioner respectfully demands that Judge Antoine L. Joseph, sitting by designation for the United States District Court of the Virgin Islands follow the mandate of the Court of Appeals for the Third Circuit and comply with existing statutory and case law of the Virgin Islands as mandated by the laws of the Virgin Islands and by the Court of Appeals for the Third Circuit.

Petitioner prays that the judgment of the District Court be vacated and remand the case to the Court of Appeals for further deliberation on the jurisdictional question in order to have a uniformity of decisions within the District Court and Court of Appeals and Law of the Virgin Islands.

Respectfully submitted,

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April 10, 1981

APPENDIX

EXCERPTS OF MEMORANDUM AND ORDER

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ETHYLE BLOCH, Plaintiff	CIVIL NO. 71/31
vs.	ACTION FOR DIVORCE, CUSTODY AND SUPPORT OF CHILD
HAROLD BLOCH, BERNARD BLOCH, JOAN BLOCH, ROSALYN BLOCH, NARUTH CORP. and THE BANK OF NOVA SCOTIA, Defendants	

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JOSEPH, District Judge
Sitting by Designation

This matter came on for hearing April 22, 1977, on plaintiff's motion to enforce this Court's order of June 6, 1975, by requiring the defendant, Harold Bloch, to convey to the plaintiff Ethyle Bloch, his former wife, his ownership in Plot No. 22 Estate Golden Rock, St. Croix, and Lot 243A Estate Golden Rock, St. Croix. [1]

Prior to hearing, the Court required plaintiff to serve a summons and a copy of said motion upon all named defendants so that each of the parties could assert any claim it might have regarding title to the subject properties. Defendant Naruth Corporation is the record title holder of Lot 243A Estate Golden Rock. Defendants Bernard Bloch, Joan Bloch and Rosalyn Bloch are the record title holders of Plot No. 22 Estate Golden Rock. Defendant Bank of Nova Scotia holds a first mortgage on Plot No. 22 Estate Golden Rock. All defendants were properly served.

Plaintiff appeared personally and by her attorneys, Isherwood, Colianni, Alkon and Barnard (Thomas, Alkon, Esquire, of counsel). The bank of Nova Scotia appeared through its attorney, Robert Ruskin. Defendant Harold Bloch failed to appear. Bernard Bloch appeared *pro se*. Rosalyn Bloch and Joan Bloch failed to appear. Naruth Corporation, through counsel Albert Sheen, Esquire, filed a special appearance for the purpose of attacking the Court's personal jurisdiction over Naruth Corporation.

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[1] The order of June 6 awarded plaintiff alimony in gross of $100,000. Defendant was ordered as of that date to pay the money forthwith or to deed the above-numbered plots to plaintiff. An appeal to the Third Circuit was dismissed.

Defendant Naruth Corporation, through counsel, argued that it had not properly been served and that the Court lacked personal jurisdiction over Naruth Corporation. The Court, noting that Naruth Corporation had been properly served by publication pursuant to a previous order of the Court, overruled the contention of Naruth Corporation that it was not properly before the Court. Counsel for Naruth Corporation then withdrew from the case.

The Court then heard testimony regarding the ownership of Lot 243A Estate Golden Rock.

ORDER

For the reasons stated in the foregoing memorandum, it is hereby

ORDERED that defendant Harold Bloch execute good and valid deeds conveying to plaintiff Ethyle Bloch all right, title and interest to Plot No. 22 Estate Golden Rock, St. Croix, and Lot 243A Estate Golden Rock, St. Croix, within 30 days from the date of the entry of this order; and it is further

ORDERED that if defendant Harold Block fails to execute such deeds, a Clerk of this Court, pursuant to this order, shall execute such deeds to conform to the order of this Court.

Dated this 30th day of June, 1977.

(s) Antoine L. Joseph, Judge
Sitting by Designation

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 77-2073

ETHEL BLOCH
vs.
HAROLD N. BLOCH, ET AL

HAROLD BLOCH, BERNARD BLOCH, JOAN BLOCH,
ROYALYN BLOCH, and NARUTH CORP.

Appellants

(D.C. Civil No. 31-71)

ON APPEAL FROM THE DISTRICT OF THE
VIRGIN ISLANDS
DIVISION OF ST. CROIX

Submitted Under Third Circuit Rule 12(6)
April 25, 1978
Before GIBBONS, GARTH, and HIGGENBOTHAM,
Circuit Judges

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Appellants Harold N. Bloch, Bernard Bloch, Joan Bloch, Rosalyn Bloch, and Naruth Corporation appeal from an order of the District Court of the Virgin Islands ordering that Harold Bloch, owner of Plot 22, Estate Golden Rock, St. Croix, and Lot 243A, Estate Golden Rock, St. Croix, convey said properties to Ethel Bloch, in lieu of paying her $100,000 alimony in gross. The court had jurisdiction over the parties, its findings of fact are not clearly erroneous, and we find no legal error.

It is therefore ORDERED and ADJUDGED that the judgment of the district court is affirmed. Costs to be taxed in favor of appellee.

By the Court,

(s) John J. Gibbons
Circuit Judge

Attest

(s) Thomas F. Quinn
Clerk

Dated: May 8, 1978.

Certified as a true copy and issued in lieu
of a formal mandate on July 11, 1978.

Test:
Clerk, United States Court of Appeals
for the Third Circuit

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 80-1243

ETHEL BLOCH
v.
HAROLD N. BLOCH, et al
BERNARD BLOCH, Appellant

ON APPEAL FROM THE DISTRICT COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX
(CIVIL NO. 71-0031)

Submitted Under Third Circuit Rule 12(6)
December 12, 1980
BEFORE: SEITZ, *Chief Judge*, GIBBONS and ROSENN, *Circuit Judges*

After consideration of the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

(s) Seitz
Chief Judge

Attest:

Sally Mrvos
Clerk

DATED: December 18, 1980.

Certified as a true copy and issued in lieu
of a formal mandate on January 26, 1981.

Test: SALLY MRVOS

Clerk, United States Court of Appeals
for the Third Circuit

SUR PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 80-1243

ETHEL BLOCK

v.

HAROLD N. BLOCH, et al.

BERNARD BLOCH, Appellant

ON APPEAL FROM THE DISTRICT COURT OF THE
VIRGIN ISLANDS, DIVISION OF ST. CROIX

(Civil No. 71-0031)

Present: SEITZ, Chief Judge, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, Circuit Judges.

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who par-

ticipated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in bane, the petition for rehearing is denied.

By the Court,

(s) Seitz
Chief Judge

Dated: January 16, 1981.

ORDER OF THE U.S. COURT OF APPEALS FOR THE THIRD COURT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

(ORIGINAL PROCEEDING)

No. 81-1204

Bernard Bloch,

Petitioner

vs.

Antoine L. Joseph, Judge, sitting by Designation for the United States District Court of the Virgin Islands Division of St. croix, Christiansted

Present: ADAMS, ROSENN and HUNTER, *Circuit Judges*

Submitted is petitioner's petition for writ of mandamus in the above-captioned matter listed for February 23, 1980 or as the Court decides.

Respectfully,

(s) Sally Mrvos (MDB)

Clerk

SM:MDB:clp
enc.

The foregoing Motion is/are

Deny.

By the Court,

(s) _____ *Judge*

Dated: February 25, 1981